

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-06273-CR-HUCK

UNITED STATES OF AMERICA,

Plaintiff,

v.

ARIEL HERNANDEZ,

Defendant.

ARIEL HERNANZ'S MOTION FOR PRODUCTION OF  
WITNESS STATEMENTS AT LIMITED REMAND HEARING

To: Honorable Paul Huck  
United States District Court Judge  
Southern District of Florida, Miami Division  
99 NE 4<sup>th</sup> Street  
Miami, FL 33128

The Defendant, ARIEL HERNANDEZ, by and through his undersigned legal counsel and pursuant to Rules 26.2(g)(3), 46(i), and 54, Fed. R. Crim. P., requests this Court to order the Government to produce for inspection, copying and review any written or recorded statements or reports of any witnesses called by the Government at the limited remand hearing which relate to the witnesses testimonies, and which the witnesses either reviewed or relied upon in preparing their testimony in this case. As grounds therefore, Mr. Hernandez would show as follows:

FED. R. CRIM. P. 26.2, GOVERNMENT WITNESS REPORTS

Fed. R. Crim. P. 26.2 requires, subsequent to a motion by the defendant, that the Government produce for examination any and all statements in their possession which are attributable to any witness testifying at the hearing. Rule 26.2 states:

- (a) **Motion for Production.** After a witness other than the defendant has testified on direct examination, the Court, on motion of a party who did not call the witness, shall order the attorney for the Government or the defendant and the defendant's attorney, as the case may be, to produce, for the examination and use of the moving party, any

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statement of the witness that is in *their possession which "relates to "* the subject matter concerning which the witness has testified. (Emphasis added.)

Further, F. R. Crim. P. 46(i) reads as follows:

(i) **Production of Statements.**

(1) **In General.** Rule 26.2(a)-(d) and (f) applies at a detention hearing held under 18 U.S.C. § 3142, unless the Court, for good causes shown, rules otherwise in a particular case.

(2) **Sanctions for Failure to Produce Statement.** If a party Elects not to comply with an order under Rule 26.2(a) to deliver a statement to the moving party, at the detention hearing, the Court may not consider the testimony of a witness whose statement is withheld.

It is clearly evident that the acting authorities when propounding Rule 26.2 specifically intended that the Rule would apply a hearing conducted pursuant to a limited remand. Furthermore, Rule 54, Fed.R.Crim.P., states that the Federal Rules of Criminal Procedure, in this case Rule 26.2, "...apply to all criminal proceedings in the United States District Courts...."

**WHEREFORE**, for the foregoing reasons **Ariel Hernandez** moves this Court for an Order compelling the Government to release for inspection and copying all statements of witnesses testifying at the hearing in this case.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing was furnished by mail and/or via fax this 5<sup>th</sup> day of September, 2003 to: LIST OF ATTACHED COUNSEL.

Respectfully Submitted,

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BY \_\_\_\_\_  
RICHARD L. ROSENBAUM

**USA v. ARIEL HERNANDEZ  
UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA  
CASE NO: 00-06273-CR-HUCK**

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